UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,502	09/11/2000	Monica R. Nassif	497.001US1	4893

7590 09/18/2007

Mark A Litman & Associates P A
York Business Center
Suite 205
3209 West 76th Street
Edina, MN 55435

EXAMINER	
HUI, SAN MING R	
ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
09/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/659,502	NASSIF ET AL.	
	Examiner	Art Unit	
	San-ming Hui	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31,33-37 and 39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *31,33-37 and 39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 9, 2007 has been entered.

Claims 32 and 38 have been cancelled. Claims 31, 33-37 and 39 are pending.

The outstanding rejection under 35 USC 112, second paragraph is withdrawn in view of the amendments filed August 9, 2007.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 31, 33-37, and 39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 30-34 of copending Application No. 11/441,647 ('647). Although the conflicting claims are not identical, they are not patentably distinct from each other because although '647 does not expressly teach the employment of specific solvent and specific pH, those agents and conditions are recited in the claims therein. Therefore possessing the conflicting claims, one of ordinary skill in the art would therefore be reasonably expected to optimize the pH and employ any of the recited solvents, including those herein recited solvents, in the aromatherapy composition.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 31, 33-37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/21307 (English equivalent US 6,114,298 is provided herein) in view of Remington's Pharmaceutical Science, 18th ed., 1990 page 1314:

US 6,114,298 ('298 herein after) teaches a composition comprising 0.005 to 5% of essential oil, a surfactant including nonionic surfactant and up to 15% of a long chain aliphatic alcohol such as decanol (See col. 4, lines 46-50, col. 7, lines, 19 –col. 8, line 3, col. 10, lines 53, and 63-67). '298 also teaches the pH of the composition as 1-12, and preferably 3-9 (See col. 9, lines 42-44). '298 also teaches the composition as useful to clean animate or inanimate object and surfaces such as skin, wall, glass, plastic, woods, vinyl, etc. (See col. 14, lines 44-67).

'298 does not expressly teach the herein recited ranges of essential oil and long chain aliphatic alcohol. '298 does not expressly teach the surfactant as Tween 20. '298 does not expressly teach the pH as 6.5-7.0.

Remington teaches that Tweens (polysorbate) as commonly use nonionic surfactant in pharmaceutical, cosmetics (See page 1314).

It would have been obvious to one of ordinary skill in the art at the time of invention to employ the herein claimed concentration of essential oil and long chain aliphatic alcohol in the cleaning composition and the disinfecting method. It would have been obvious to one of ordinary skill in the art at the time of invention to employ the

herein claimed pH in the cleaning composition and the disinfecting method. It would have been obvious to one of ordinary skill in the art at the time of invention to employ a nonionic surfactant Tween 20, in the herein claimed dosage, in the cleaning composition and the disinfecting method.

One of ordinary skill in the art would have been motivated to employ the herein claimed concentration of essential oil and long chain aliphatic alcohol as well as the herein claimed pH of the composition in the cleaning composition and the disinfecting method. Since the concentration of essential oil and long chain aliphatic alcohol as well as the pH of the cleaning composition of '298 are overlapped with those of herein claimed, the optimization of these parameters would be considered obvious as being within the purview of skilled artisan, absent evidence with regard to the criticality of the herein claimed ranges.

One of ordinary skill in the art would have been motivated to employ a nonionic surfactant Tween 20, in the herein claimed dosage, in the cleaning composition and the disinfecting method. It is known that various non-ionic surfactants as useful in the composition of '298. Therefore, employing any well-known pharmaceutically and cosmetically acceptable surfactant, including Tween 20, would be considered simply employing obvious alternatives, absent evidence to the criticality of employing Tween 20 in the instant invention.

Claims 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,788,975 ('975).

'975 teaches a method of using a lasting scent composition comprising essential oils such as lavender oil (about 1%), about 18% of dodecanol and the use of Tweens surfactant (See col. 8-9, Example 8, claims 1, 2, 10 for example). '975 also teaches the concentrate of such odoriferous composition (See col.6, lines lines 48-50, and col. 9). '975 tecaches such odoriferous composition can be used as detergent and washing composition or be used on a surface or object (See col. 3, lines 9-15).

'975 does not expressly teach the herein claimed concentration of various components. '975 does not expressly teach the pH of composition.

It would have been obvious to one of ordinary skill in the art at the time of invention to employ the herein claimed concentration/amount of the components in the odoriferous composition of '975. It would have been obvious to one of ordinary skill in the art at the time of invention to employ the pH of the odoriferous composition of '975.

One of ordinary skill in the art would have been motivated to employ the herein claimed concentration/amount of the components in the odoriferous composition of '975 and use the same for leaving long-lasting scent. Absent evidence to the contrary, the optimization of the resulted parameters such as the concentration employed is considered obvious as being within the purview of the skilled artisan. Furthermore, for the herein claimed high concentration of long chain aliphatic alcohol, possessing the teachings of '975, one of skilled in the art would see that the concentrate of '975 would have the high concentration of dodecanol and the optimization of the concentration of dodecanol of the concentrate would be obvious as being within the purview of the skilled artisan, absent evidence to the contrary. Similarly, since the composition of '975

is used in the various surfaces and human, extreme pH of the composition would be very unlikely, especially when it is used on the skin as repellant. Optimizing the pH to around neutral is therefore obvious to one of skilled artisan depending on the type of odoriferous composition is being formulated.

Response to Arguments

Applicant's arguments filed August 9, 2007 with regard to the rejection 35 USC 102 have been fully considered but they are not persuasive. The examiner notes that the rejection under 35 USC 102(b) has been withdrawn. Such arguments are considered moot in view of the rejection under 35 USC 103(a) as set forth above.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

San-ming Hui
Primary Examiner
Art Unit 1617